



# Locate Technologies Limited

Takeover Preparedness Manual

October 2025

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# 1. Overview

## Purpose

The purpose of this Takeover Preparedness Manual (*Manual*) is to assist the board of directors (*Board*) of Locate Technologies Limited (*Locate*), the Chief Executive Officer and other members of the Locate management team, in the event that it receives an unsolicited takeover approach.

In the event an approach is received, the material contained in this Manual should be supplemented by advice from Locate’s management and advisers at the time.

## Transaction structure

There are two ways of implementing a takeover of a “code” company under the New Zealand Takeovers Code:

- a takeover offer made in accordance with the terms of the Takeovers Code; or
- a court-sanctioned scheme of arrangement under the Companies Act.

This Manual explores the key practical and procedural steps for each of these processes.

## Who to contact for more information

Questions arising out of this Manual should be referred to:



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## 2. Immediate Steps

### IMMEDIATE STEPS ON RECEIPT OF AN APPROACH

- 1 Consider whether an announcement is required under **continuous disclosure obligations** and in accordance with Locate's Continuous Disclosure and Communication Policy (*Disclosure Policy*). Typically, an announcement is not required (assuming the approach remains confidential), however this decision will ultimately be made by the Decision Makers (defined below).
- 2 **Notify directors.** Directors should consider whether they are **interested in the transaction** through an association with an offeror or substantial shareholder.
- 3 Contact **external lawyers** and, if appropriate, financial/strategic advisers to provide advice on managing the response.
- 4 Hold an initial **Board meeting**. Appoint a **sub-committee of the Board**, a working group (including management), legal and any financial/strategic advisers and other key advisers.
- 5 Review and **update draft announcements** which may be required in the event of a leak or receipt of a takeover notice.
- 6 Before engaging with the interested party, enter into a **confidentiality agreement**.
- 7 The Chairperson, or his or her nominee, should be the only **person authorised to speak publicly** in relation to the bid.
- 8 Ensure that any **internal valuation model** is refreshed, and that external company research is monitored.

Further details are set out in the Action Plan in section 3 of this Manual.

### 3. Action Plan

This action plan sets out the key steps following receipt of an expression of interest or non-binding indicative offer. It is in the following parts:

- **Part 1: Initial Steps** – covers initial steps that will be relevant whether the transaction is structured as a takeover offer or scheme of arrangement.
- **Part 2: Takeover offer** – covers additional steps for a takeover offer through to the despatch of takeover offer documents. There are additional steps in a takeover offer from this point, but for Locate the obligations are minimal.
- **Part 3: Scheme of arrangement** – covers additional steps for a scheme of arrangement through to final Court orders for the scheme.

#### PART 1: INITIAL STEPS

#	Timing	Action	Comments
1.	If an expression of interest or non-binding indicative offer ( <i>NBIO</i> ) is received, or there is an indication that one is imminent.	Locate should consider whether it must notify NZX pursuant to its <b>continuous disclosure obligations</b> .	<p>NZX guidance on continuous disclosure suggests that disclosure will <b>not</b> generally be required. This is on the basis that:</p> <ul style="list-style-type: none"> <li>• if the approach is sufficiently speculative and indefinite, it will not be material information at all; or</li> <li>• if the approach is sufficiently well formed so as to constitute material information, the exclusion for an incomplete proposal or negotiation should apply (for so long as the information remains confidential).</li> </ul> <p>However, if there is a leak or speculation in the market, an announcement could be required (see below).</p> <p>In accordance with Locate’s Disclosure Policy, the Locate Board will manage compliance with its disclosure obligations. Locate has appointed the Company Secretary as the person responsible for communication with NZX in</p>

#	Timing	Action	Comments
			<p>relation to NZX Listing Rule matters. The Company Secretary's responsibilities include:</p> <ul style="list-style-type: none"> <li>(a) ensuring that information which may be Material Information and which may require disclosure to NZX is brought to the attention of the Board and senior managers promptly and without delay;</li> <li>(b) information that is determined to be Material Information is released promptly to NZX through MAP, with the appropriate flag; and</li> <li>(c) maintaining a record of discussions and decisions made about disclosure issues by the Board and a record of announcements made to NZX.</li> </ul>
2.	If there is a leak or media speculation on a potential takeover.	The Locate Board should consider whether it must notify NZX pursuant to its <b>continuous disclosure obligations</b> .	<p>Media speculation about a takeover does not necessarily mean that an announcement is required. For example, disclosure is not required if the takeover is confidential and confidentiality has been maintained, and the speculation is inaccurate, lacking in specific detail or from a source which does not lend substantial credence to the speculation.</p> <p>However, if the information is specific and accurate, an announcement may be required. The content of the announcement will depend on what the market is aware of and strategy and confidentiality considerations at the time. The announcement could be a holding announcement or it could include more detail on the potential offer. Draft holding announcements are included in <b>Appendix A</b>.</p>

#	Timing	Action	Comments
			<p>If necessary to ensure an orderly market, Locate may also need to seek a trading halt from NZX, although the circumstances where this would be appropriate are generally rare.</p> <p>It is ultimately for the Locate Board to decide when disclosure is required.</p>
3.	Following receipt of an approach.	<p><b>Notify directors</b> (subject to any potential conflicts of interest), <b>CEO and CFO</b>.</p> <p>The Board should <b>meet</b> to decide how to proceed.</p>	<p>See <b>Appendix B</b> for a draft meeting agenda for the initial Board meeting.</p> <p>The meeting would include the following:</p> <ul style="list-style-type: none"> <li>• Initial briefing</li> <li>• Consider directors' interests/conflicts. A draft protocol in relation to interested directors is provided in <b>Appendix C</b>.</li> <li>• Appointment of sub-committee – see further details below.</li> <li>• Appointment of Board/management/adviser working group – see further details below.</li> <li>• Confirm appointment of legal counsel.</li> <li>• Consider appointment of strategic/financial adviser and communications adviser.</li> <li>• Consider appointment of independent adviser for the purposes of the Takeovers Code/scheme approval.</li> </ul>

#	Timing	Action	Comments
4.	Any time following receipt of an approach.	Board should form a <b>Board subcommittee</b> to investigate and consider the approach. Board should also appoint a Board/management/adviser <b>working group</b> to manage the day to day response.	<p>For conflict of interest management or logistical/director availability reasons it is conventional for the Board to appoint a sub-committee with appropriate delegations.</p> <p>Members of the sub-committee should:</p> <ul style="list-style-type: none"> <li>(a) not be involved, or otherwise associated with an offeror;</li> <li>(b) not be an associated person of a shareholder who is involved with, or otherwise associated with, an offeror; and</li> <li>(c) be able to bring an independent view to decisions in relation to the Takeover Offer.</li> </ul> <p>Locate should also appoint a working group to manage the day to day response to the proposed offer, comprising selected Locate employees and directors, as well as key external advisers. The working group should be led by the Company Secretary (unless the Company Secretary is conflicted, in which case the Board should appoint another suitable person to lead the working group).</p> <p>See <b>Appendix B</b> for draft meeting agendas for the initial Board subcommittee and working group meetings.</p>
5.	Following receipt of an approach.	Contact <b>external lawyers</b> and any financial/strategic advisers.	<p>External lawyers can provide advice on directors' responsibilities, disclosure obligations, confidentiality arrangements and managing the response. Any financial/strategic advisers should also be involved in management of the response.</p>

#	Timing	Action	Comments
6.	Any time following receipt of an approach.	Commence process to appoint an <b>independent adviser</b> .	<p>An independent adviser's report will be required, regardless of whether the transaction proceeds as a takeover offer or scheme of arrangement. As such, Locate may wish to commence the process to select and appoint an independent adviser in advance of receiving the formal takeover notice. Locate should maintain a list of independent advisers that it will consider approaching in the event of a takeover offer or scheme of arrangement (noting that there may be conflicts or other reasons that prevent one or more of the advisers on that list being appointed in relation to any particular offer).</p> <p>As at [October] 2025, the list of independent advisers that Locate will consider approaching (and the initial contact at each of those advisers) are:</p> <ul style="list-style-type: none"> <li>• Simmons Corporate Finance Limited (Peter Simmons, Director, psimmons@simmonscof.co.nz, +62 21 669 524)</li> <li>• Calibre Partners (Grant Graham, Partner, ggraham@calibrepartners.co.nz, +64 9 919 7475)</li> <li>• Grant Samuel (Michael Lorimer, Managing Director, m.lorimer@grantsamuel.co.nz, + 64 9 912 7777)</li> <li>• Northington Partners (Greg Anderson, Managing Director, greg.anderson@northington.co.nz, +64 3 378 2100)</li> </ul>
7.	Before engaging with any interested party.	Enter into a <b>confidentiality agreement</b> with the interested party.	This is important to ensure any information provided is subject to confidentiality (and therefore an exclusion to disclosure under the NZX Listing Rules can be relied upon for so long as material information remains confidential)

#	Timing	Action	Comments
			and to minimise the risk of Locate breaching the insider trading provisions of the Financial Markets Conduct Act (as the confidentiality agreement should include a restriction on trading by that party when in possession of inside information).
8.	If requested by the interested party.	Locate should consider whether to provide any non-public <b>due diligence</b> information requested by an interested party.	Locate is under no obligation to provide due diligence access to an offeror or potential offeror. Refusing due diligence access is not a “defensive tactic”. However, directors may consider it in the best interests of the company to provide such access.
9.	If requested by the interested party.	Locate should consider whether to enter into any <b>exclusivity arrangements</b> (including any agreed break fees) requested by an interested party (only likely to be relevant in the context of a potential scheme of arrangement, except if the arrangements trigger the restrictions on defensive tactics).	Locate is under no obligation to enter into any exclusivity arrangements. Where they are agreed, they should not prohibit directors from responding to unsolicited competing offers from third parties. If Locate agrees to exclusivity arrangements that are excessively restrictive, the Takeovers Panel may intervene in the scheme of arrangement process, either by making submissions to the Court or by providing a qualified no-objection statement.
10.	Prior to announcing the proposed transaction.	Locate should seek to reach a landing with the interested party on <b>value and any conditions</b> that are acceptable to both parties.	By reaching a landing on these important matters, the likelihood of success of a transaction will be increased, as the Board will be better placed to be able to recommend an offer to shareholders. Similarly, if the parties are unable to reach a landing on these points, an interested party may be less willing to proceed in the face of opposition from the Board.

#	Timing	Action	Comments
			To assist with the analysis, Locate should ensure that any internal valuation model is refreshed, and that external company research is monitored.

## PART 2: TAKEOVER OFFER

#	Timing	Action	Comments
<p>This Part 2 covers additional steps if the interested party proceeds by giving a takeover notice under the Takeovers Code. If it is instead determined that the offer will proceed via a scheme of arrangement, please refer to Part 3 below.</p>			
1.	Immediately upon receipt of the takeover notice.	Make an <b>announcement</b> regarding receipt of the notice (together with a copy of the takeover notice) to NZX.	A draft initial announcement is provided in <b>Appendix B</b> .
2.	Not later than 2 working days after receiving a takeover notice.	Locate must send a <b>class notice</b> to the offeror.	The notice must detail the number of Locate shares on issue, as well as providing full details in relation to any outstanding warrants or options (in the case of a full takeover offer). A draft class notice is provided in <b>Appendix D</b> .
3.	Must be sent to the offeror within 10 working days of receipt of the takeover notice, if Locate wants the offeror to include the TCS with the offer sent to shareholders.	Preparation of <b>Target Company Statement (TCS)</b> including independent adviser's report.	More detail about the content required for the TCS is set out in the following pages. If Locate does not send the TCS to the offeror within 10 working days of receipt of the takeover notice (to include in the offer document), Locate must independently send the TCS to shareholders, the offeror and NZX within 10 working days of being notified of the despatch of the offer document.

#	Timing	Action	Comments
4.	Not later than 2 working days after the record date (which will be notified to Locate by the offeror).	Provide the offeror with a copy of Locate's <b>financial products register</b> in electronic form.	<p>The offeror must give Locate at least 2 working days' notice of the record date. The record date must not be more than 8 working days before the date of the offer and is the date on which the identity of Locate's shareholders to whom the offer will be made is determined.</p> <p>The financial products register is a register of all securities that carry the right to vote at a general meeting (including convertible securities) – i.e. Locate's share register maintained by MUFG Pension &amp; Market Services.</p>
5.	Must be sent within 3 working days of the date of the offer and during the period beginning 10 working days and ending 20 working days after the date of the takeover notice.	Offeror to send <b>offer documents</b> .	Despatch notice to be sent by the offeror immediately (on sending offer documents) to Locate, NZX and Registrar of Companies.

### PART 3: SCHEME OF ARRANGEMENT

#	Timing	Action	Comments
<p>This Part 3 covers additional steps if the transaction proceeds as a scheme of arrangement. It is however possible that the transaction could switch to an offer under the Takeovers Code (for example, if the Board does not support the transaction and the offeror still wants to proceed). If it is determined that the transaction will be an offer, please refer to Part 2 above.</p>			
1.	Prior to announcing the proposed transaction.	Locate and the interested party should agree on an appropriate <b>timetable</b> .	<p>The overall timetable for a scheme of arrangement is not prescribed by law, but a proposed scheme timetable should allow for:</p> <ul style="list-style-type: none"> <li>• a minimum three-week period for the Takeovers Panel to review the draft scheme booklet;</li> <li>• at least 10 working days' notice to Locate's shareholders before the scheme meeting can be held; and</li> <li>• sufficient time to provide the Court with relevant documentation to hold two Court hearings in accordance with Court rules.</li> </ul>
2.	Prior to announcing the proposed transaction.	Locate and the interested party may agree a <b>scheme implementation agreement</b> .	<p>A scheme requires active co-operation by the offeror and Locate. Generally, the offeror and Locate would seek to enter into a negotiated scheme implementation agreement. This would typically:</p> <ul style="list-style-type: none"> <li>• set out the terms of the scheme and commit the offeror and Locate to the scheme;</li> <li>• oblige Locate to seek shareholder approval for the scheme, and normally commit directors to recommend voting in favour of the scheme in the absence of a superior proposal; and</li> </ul>

#	Timing	Action	Comments
			<ul style="list-style-type: none"> <li>set out how Locate and the offeror will work together throughout the scheme process.</li> </ul>
3.	Following announcement of the scheme of arrangement.	Preparation of a <b>scheme booklet</b> including independent adviser's report.	The scheme booklet includes a notice of meeting of shareholders to approve the scheme. It must be submitted to the Takeovers Panel in order to obtain a no-objection statement with regards to the transaction. More detail about the content of the scheme booklet is set out in the following pages.
4.	At least two weeks before filing documents with Court.	Send draft scheme documentation to the <b>Takeovers Panel</b> .	The purpose of sending the scheme documentation to the Takeovers Panel at this stage is to seek a non-binding letter indicating that the Panel is minded to issue a no-objection statement in due course ( <i>letter of intention</i> ). The letter will be issued if the Takeovers Panel is satisfied with the draft scheme documentation, the identification of the interest classes of shareholders, and the terms of the scheme. The letter of intention is then filed with the Court for the initial hearing.
5.	Following receipt of the letter of intention from the Takeovers Panel.	Locate to seek <b>initial Court orders</b> .	The final draft scheme booklet and the letter of intention from the Takeovers Panel should be filed with the Court. If the Court is satisfied with the documents, the Court will give approval to send the scheme booklet to all Locate shareholders.

#	Timing	Action	Comments
6.	Following receipt of initial Court orders.	Locate to <b>despatch scheme booklet</b> convening shareholders' meeting.	At least 10 working days' notice must be given for the shareholders' meeting. However, given the importance of the matter to be considered by shareholders, the Board should consider uploading the documents to Locate's website at least 20 working days' prior to the meeting as recommended by the NZX Corporate Governance Code.
7.	Following Locate shareholder approval of the scheme of arrangement.	Locate to seek <b>final Court orders</b> for the scheme of arrangement.	The Companies Act sets out no specific criteria by which schemes are to be approved. Generally, if the requirements of the initial Court orders have been met (which will cover all procedural requirements and shareholder approval of the scheme), it will be approved by the Court. However, the Court has discretion to reject it. The Courts in New Zealand have typically considered (among other things) whether the scheme is such that an intelligent or honest person of business might reasonably approve it. The Courts have also considered whether the scheme is "fair and equitable".

## 4. Target Company Statement

If the takeover is structured as a takeover offer, Locate will be required to issue a Target Company Statement (*TCS*) to its shareholders. The purpose of the TCS is to provide Locate shareholders with information relevant to their assessment of the offeror's bid.

The content that is required to be included in the TCS is specified in Schedule 2 of the Takeovers Code. Among other things, the TCS must disclose:

- share and shareholder information;
- specified information relating to Locate's directors and senior officers (e.g. holdings of Locate shares, whether they have agreed to accept the offer or entered into arrangements with the offeror);
- arrangements (if any) between the offeror and Locate (e.g. confidentiality arrangements concerning due diligence, break fees); and
- financial information and notice of any material changes in the position or prospects of Locate since the date of its last annual report (or a statement confirming there are no such changes).

Perhaps most importantly, the TCS must contain the Board's recommendation to accept or reject the offer, and the reasons for that recommendation, or a statement that the directors cannot or are not making a recommendation, and their reasons for doing so. Individual directors who dissent or abstain from the Board's decision must be named and their reasons for doing so specified. Importantly, the Board will have the benefit of the independent adviser's report (as either the full report, or a summary of it, must be sent with the TCS), so the Board can factor the independent adviser's conclusion into their recommendation.

The contents of the TCS as a whole must be approved by Locate's Board, with any dissenting directors named and their reasons for doing so specified. In addition, two Locate directors, and the CEO and CFO, are required to certify as to the accuracy and completeness of the TCS, having undertaken proper enquiry.

### Where can I find out more?

The Takeovers Panel has published a guidance note on TCS, which is available from: <http://www.takeovers.govt.nz/guidance/guidance-notes/target-company-statements/>

Examples of recent TCS can be found through the Takeovers Panel's database of recent transactions, available at: <http://www.takeovers.govt.nz/transactions/>

## 5. Scheme Booklet

If the takeover is structured as a scheme of arrangement, Locate will need to prepare a scheme booklet (*Scheme Booklet*). This will be issued to its shareholders and also sent to the Takeovers Panel to obtain a no-objection statement in respect of the transaction.

The purpose of the Scheme Booklet is to:

- convene a meeting of shareholders to approve the scheme; and
- provide Locate shareholders with the information that could reasonably be expected to be material to the making of a decision whether or not to approve the scheme.

The Scheme Booklet will contain substantially the same information as the TCS. Takeovers Panel guidance provides that there should be a clause-by-clause analysis of the extent to which disclosures required by Schedules 1 and 2 of the Takeovers Code and Rule 15 or Rule 16 of the Takeovers Code can be made – whether exactly as set out in the Takeovers Code, or modified to better match the terms of, and the parties to, the proposed scheme of arrangement.

Similarly to a TCS, the Scheme Booklet will contain a summary of the reasons to vote in favour and the reasons to vote against the scheme. It will also include the independent adviser's report.

The Scheme Booklet as a whole will need to be approved by Locate's Board, with any dissenting directors named and their reasons for doing so specified.

### Where can I find out more?

The Takeovers Panel has published a guidance note on Schemes of Arrangement, which is available from:

<https://www.takeovers.govt.nz/guidance/guidance-notes/schemes-of-arrangement/>

Examples of recent Scheme Booklets can be found through the Takeovers Panel's database of recent transactions, available at:

<http://www.takeovers.govt.nz/transactions/>

## 6. Independent Adviser's Report

Under both a takeover offer and a scheme of arrangement, Locate must appoint an independent adviser and obtain an independent adviser's report. The role of the independent adviser is to ensure that shareholders are well informed, by opining on the merits of the offer or scheme. Typically this takes the form of a valuation exercise, supplemented by a consideration of other relevant factors. Either the full independent adviser's report, or a summary of it, must be sent to Locate's shareholders with the TCS or Scheme Booklet.

The independent adviser needs to be approved by the Takeovers Panel. The Takeovers Panel has published detailed guidance on its expectations of independent advisers, criteria for approval and its expectations for independent adviser reports. The "merits" must be more than a valuation assessment, and should also consider matters such as the significance of conditions, possibility of competing offers and implications for shareholders of the change of control.

Critical to the production of a timely report will be the provision of financial and other information by Locate to the independent adviser.

The process of selecting and obtaining approval for an independent adviser should begin promptly following receipt of the takeover notice or announcement of a scheme of arrangement. Ideally, it would begin before this time, as soon as possible in the process.

Every prior or existing relationship between the adviser and any relevant entity must be disclosed to the Panel, but will not automatically disqualify the adviser from being approved. If the adviser Locate wishes to use has previously provided a report for Locate, the Panel will need to be satisfied that the adviser is nevertheless independent of Locate for the purposes of producing the independent adviser's report. To make this assessment, the Panel will need to be satisfied that:

- the adviser would not be constrained by the methodology or views expressed in its earlier report; and
- the degree of familiarity (if any) between personnel at the adviser firm and personnel at Locate would not compromise the adviser's independence.

The adviser must remain independent throughout the course of the transaction. It is the adviser's responsibility to ensure that they remain independent, but Locate should be conscious of the requirement that the adviser must not prepare or give advice in such a manner that they become adviser to the Locate Board (as opposed to the Locate shareholders). The adviser will need to restate its declaration of independence

to the Panel on the day on which the final version of the independent adviser's report is delivered to Locate. If the adviser fails to meet the Panel's conditions of approval, a new adviser may need to be appointed.

**Where can I find out more?**

The Takeovers Panel has published a guidance note on independent advisers and template forms for approval of independent advisers, which are available from: <http://www.takeovers.govt.nz/guidance/guidance-notes/independent-advisers/>

Examples of recent IAR can be found through the Takeovers Panel's database of recent transactions, available at: <http://www.takeovers.govt.nz/transactions/>

## 7. Key Director Responsibilities and Considerations

The directors:

- do not have a legal duty to put Locate “into play” or to seek alternative bids for Locate;<sup>1</sup>
- are under no obligation to engage with the offeror or provide due diligence access; and
- owe no duties to Locate’s employees or its creditors merely as a result of a takeover offer.

### Defensive Tactics

Fundamentally, the Takeovers Code puts the issue of whether or not a takeover offer will succeed in the hands of the target company’s shareholders. Consistent with their duties, directors of the target company may make their views on a takeover offer known, and may agitate in favour of accepting or rejecting an offer.

However, when a takeover notice has been given or is imminent, Rule 38 of the Takeovers Code requires that the directors of a target company must not take or permit any action, in relation to the affairs of the target company, that could effectively result in:

- an offer being frustrated; or
- shareholders being prevented from having the opportunity to decide on the merits of an offer.

Forcefully arguing that an offer should not be accepted will not breach this prohibition, as such conduct neither frustrates the offer nor prevents target company shareholders from deciding upon its merits. The Takeovers Code does not describe the specific kinds of actions taken or permitted by a target company that are prohibited as defensive tactics. By way of example, the following non-exhaustive list of actions would likely constitute defensive tactics and therefore be prohibited:

- acquiring or disposing of a major asset;
- incurring a material new liability or making a material change to an existing liability (this could include, for example, the variation of existing contracts to include clauses that would be triggered by a takeover);
- action or inaction designed to result in the non-satisfaction of an offer condition;
- declaring an abnormally large or unusual dividend or other form of capital distribution;

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<sup>1</sup> However, if appropriate in the circumstances, doing so may assist with demonstrating that any exclusivity arrangements entered in to are not unduly restrictive.

- undertaking material issues of new shares or repurchases of existing shares, or material issues of convertible securities;
- entering an agreement with a third party that confers material economic benefits on the target company which are available only to one particular offeror; or
- acquiring an asset that would render the offer subject to regulatory approval (such as under the Overseas Investment Act 2005 or the Commerce Act 1986) that was not anticipated by the offeror prior to the issuing of a takeover notice under rule 41 of the Code.

The prohibition on defensive tactics does not prevent Locate from taking steps to encourage competing bona fide offers from other parties or attempting to negotiate a higher bid from the offeror, or actions which:

- have been approved by an ordinary resolution of Locate's shareholders (there are particular requirements for the notice of meeting in this case);
- are taken or permitted under a contractual obligation or in the implementation of proposals approved by Locate's directors (the contract must have been entered into, or the proposals approved, before a takeover notice was received by Locate or before it became aware that an offer was imminent); or
- are taken or permitted for reasons unrelated to the offer with the prior approval of the Takeovers Panel.

#### Where can I find out more?

The Takeovers Panel has published a guidance note on defensive tactics, which is available from:

<http://www.takeovers.govt.nz/guidance/guidance-notes/defensive-tactics/>

## Truth in takeovers and schemes of arrangement

Rule 64 of the Takeovers Code prohibits a person (including the offeror, Locate, its directors, and any other person) from engaging in conduct that is:

- conduct in relation to a takeover notice, takeover offer or any other matter regulated by the Takeovers Code; and
- misleading or deceptive or likely to mislead or deceive.

The prohibition on misleading or deceptive conduct extends to conduct that is incidental or preliminary to a takeover offer, even where an offer is only likely to occur.

For schemes of arrangement, the Takeovers Panel will assess disclosure against the standard of Rule 64. The fair dealing provisions in Part 2 of the Financial Markets Conduct Act 2013 will also apply to schemes of arrangement. The Takeovers Panel has a memorandum of understanding with the Financial Markets Authority, allowing the Panel to report instances of potential misleading or deceptive conduct in a scheme. Misleading or deceptive conduct may also affect whether the Panel will issue a letter of intention or no-objection statement and what (if any) submissions the Panel might make to the Court.

## Break fees

It has become accepted market practice for a scheme implementation agreement on a scheme of arrangement to provide for a break fee. The break fee would typically be payable by the target company if a competing offer for the target company emerges and is successful, or if the directors change their recommendation to vote in favour of the scheme. Current New Zealand market practice is for a break fee to be approximately 1% of the transaction equity value. Break fees are not typical for offers under the Takeovers Code (as such offers do not require the board of the target company to agree to the terms of the offer). If an agreed break fee is excessively high, or is triggered merely by Locate shareholders not voting to approve the scheme of arrangement, the Takeovers Panel may consider the arrangements to be excessively restrictive such that it would intervene in the scheme of arrangement.

It is also increasingly common for a target company to negotiate a “reverse” break fee, which could be payable where the offeror fails to obtain regulatory approvals, the target company terminates the scheme implementation agreement due to breach of certain specified warranties, undertakings or obligations by the offeror or the High Court does not approve the scheme due to a breach by the offeror of the scheme implementation agreement. A reverse break fee is often justified as a way for a target company to recover expenses in the event of a failed scheme of arrangement, as the legal right to recover expenses which is available for a takeover offer (as outlined below) is not available for a scheme.

## Recovery of expenses

Locate can recover from the offeror any expenses Locate properly incurs in relation to an offer or a takeover notice. It would be standard market practice for a target company to do so in the event of a failed takeover offer.

The directors of Locate are also entitled to have refunded by Locate any expenses they properly incur on behalf of, and in the interests of, shareholders in relation to an offer or a takeover notice, notwithstanding anything in Locate’s constitution. These expenses could then be recovered by Locate from the target company.

Care should be taken to document all expenses for which reimbursement will be sought.

Specific legal advice should be sought before entering into any significant commitments for which reimbursement will be sought from the offeror. Reimbursement is limited to expenses “properly incurred”. Disputes regularly arise as to whether significant investment banking or public relations fees, for example, can be said to have been “properly incurred”.

In broad terms, the Takeovers Panel has classified recoverable expenses into three categories:

- **Category 1** – expenditure incurred by Locate in complying with the procedural requirements of the Takeovers Code or complying with the law and directors’ fiduciary obligations which touch on Locate’s response to a takeover;
- **Category 2** – expenditure incurred by Locate for the purpose of safeguarding the offerees’ interests. Consistent with the law as set out in the Takeovers Code, the merits of a bid (including value) should be used as a key measure of the offerees’ interests. This category also includes expenditure incurred in countering “propaganda”.
- **Category 3** – expenditure incurred by Locate in reimbursing directors for expenses properly incurred on behalf of, and in the interests of, the shareholders of Locate in relation to the takeover offer or takeover notice.

In each case, the nature of the expenses must be reasonable, the quantum must be reasonable and there must be sufficient nexus between the incurring of the expenditure and the offer or takeover notice. In resisting a takeover bid not supported by the board, if expenses were incurred by engaging in defensive tactics, they will clearly not be properly incurred. In other cases it may be necessary to show why the Locate Board considered it was necessary for such expenses to be incurred.

No recovery is available in the event of a failed scheme – in the absence of anything to the contrary in the scheme implementation agreement, costs between the offeror and the target company will lie where they fall. This is one of the reasons why negotiated reverse break fees are increasingly common.

**Where can I find out more?**

The Takeovers Panel has published guidance on the process for recovering expenses and as to the types of expenses that are recoverable, which is available from: <http://www.takeovers.govt.nz/guidance/guidance-notes/costs-recovery/>

## Locate Takeover Preparedness Manual: Appendices

**APPENDIX A:    TEMPLATE ANNOUNCEMENTS**

**APPENDIX B:    DRAFT MEETING AGENDAS**

**APPENDIX C:    DRAFT "INTERESTED DIRECTOR" PROTOCOL**

**APPENDIX D:    DRAFT CLASS NOTICE**

## Appendix A: Template Announcements

### 1. MEDIA RELEASE FOLLOWING PURCHASE OF SUBSTANTIAL STAKE

[insert date]

To NZX

#### NOTIFICATION OF [ACQUIRER] INTEREST

Locate Technologies Limited (*Locate*) (NZX: LOC) advises that it has been informed that [Acquirer] has purchased a [[insert]/substantial shareholding] in Locate.

[Insert any other details known and relevant comments, if any.]

- **Analysts' contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

#### Guidelines for media enquiry:

*We have no further comment at this stage. Shareholders and media will be kept informed of all major developments.*

## 2. MEDIA RELEASE FOLLOWING SURPRISE MARKET RAID

[insert date]

To NZX

### CONFIRMATION OF [ACQUIRER] ACQUISITION OF SHAREHOLDING

The Board of Locate Technologies Limited (*Locate*) (NZX: LOC) has been informed that [Acquirer] has [this morning/overnight launched a surprise raid to acquire] / [been purchasing shares to accumulate] a stake in the company at a price of [\$price] per share. The Board of Locate regards the acquisition of shares by [Acquirer] as opportunistic and believes the price paid does not reflect the underlying value of the company [in the context of a change of control].

[The accumulation of this stake by [Acquirer] may or may not lead to a takeover offer or other proposal for Locate.]

The Board of Locate will keep its shareholders informed of all significant developments as appropriate.

- **Analysts' contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

#### Guidelines for media enquiry:

*We have no further comment at this stage. Shareholders and media will be kept informed of all major developments.*

### 3. LEAK ANNOUNCEMENT – RESPONSE TO MARKET RUMOUR THAT IS SPECULATIVE AND DOES NOT RESULT IN A MATERIAL MOVEMENT IN LOCATE’S SHARE PRICE OR NZX QUERY

*No issue of media release is required – we do not comment on market rumour*

[insert date]

#### **LOCATE TECHNOLOGIES LIMITED RESPONSE TO MARKET SPECULATION**

Locate Technologies Limited (*Locate*) (NZX: LOC) is aware of market speculation concerning [a possible takeover of Locate]. Our policy is not to comment on market rumour or speculation. Locate remains in compliance with its continuous disclosure obligations.

- **Analysts’ contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

#### **Guidelines for media enquiry:**

*We do not comment on market rumour*

#### 4. CONFIDENTIAL APPROACH RECEIVED – HOLDING STATEMENT IF DISCLOSURE PREFERRED BEFORE DECISION MADE ON WHETHER TO PROGRESS OR REJECT

*In most circumstances disclosure is not required where Locate receives a confidential, indicative approach from a company. The holding statement below could be used in the event of a leak or press speculation where a response is required or desired.*

[insert date]

To NZX

##### [ACQUISITION] PROPOSAL RECEIVED

The Board of Directors of Locate Technologies Limited (*Locate*) (NZX: LOC) announces that it has received an approach that may or may not lead to an offer being made for Locate.

The Board of Locate will consider the proposal and advise shareholders of its views in due course. In the meantime, Locate shareholders do not need to take any action in response to the approach received.

- **Analysts' contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

##### Guidelines for media enquiry:

*We have no further comment at this stage. Shareholders and media will be kept informed of all major developments.*

## 5. CONFIDENTIAL APPROACH RECEIVED & CONSIDERED – PROCEEDING WITH DUE DILIGENCE STATEMENT

[insert date]

To NZX

### [ACQUISITION] PROPOSAL RECEIVED – DUE DILIGENCE TO BE GRANTED

The Board of Directors of Locate Technologies Limited (*Locate*) (NZX: LOC) announces that it has received an [unsolicited] indicative, non-binding and conditional proposal to acquire all of the shares of Locate at a price of [\$indicative price] per share [in the form of (cash/scrip)] [from [Offeror]] [by way of Scheme of Arrangement].

The Board of Locate, together with its advisers, undertook a careful review of the proposal put to it by [Offeror].

The Board of Locate has concluded that, subject to negotiation of an appropriate confidentiality agreement, the [Offeror] will be granted the opportunity to conduct due diligence. It is expected that this process will take several weeks.

The Board of Locate [continues to] recommend[s] that shareholders take no action. The due diligence process may or may not result in an offer for the company or a recommendation by the Board of Locate.

- **Analysts' contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

#### Guidelines for media enquiry:

*The Board of Locate and its advisers have concluded that the terms of the proposal warrant engaging with [Offeror] to grant due diligence. The Board of Locate believes that the proposal could be in shareholders' best interest but continues to recommend that shareholders take no action. If the due diligence process does not result in an offer, the Board of Locate believes that Locate has a very attractive independent future. Shareholders and media will be kept informed of all major developments.*

## 6. CONFIDENTIAL PROPOSAL RECEIVED & CONSIDERED – REJECTION STATEMENT

[insert date]

To NZX

### [OFFEROR] NON-BINDING INDICATIVE OFFER REJECTED

The Board of Directors of Locate Technologies Limited (*Locate*) (NZX: LOC) announces that it has received an [unsolicited] indicative, non-binding and conditional proposal to acquire all of the shares of Locate at a price of [\$price] per share [in the form of (cash/scrip)] [from ([Offeror])] [by way of Scheme of Arrangement].

The Board of Locate, together with its advisers, has reviewed the proposal in detail and believes that it does not reflect the fundamental value of the company in the context of a change of control. In addition, the high level of conditionality [insert key conditions] and other terms of the proposal are considered to reduce the [value and] certainty of the proposal.

The Board of Locate does not intend to take any further action in relation to the proposal at this time.

- **Analysts' contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

#### Guidelines for media enquiry:

*The Board of Locate and its advisers have carefully considered the offer and have no hesitation in unanimously concluding that the terms of the indicative, non-binding and conditional proposal significantly undervalue Locate profitability and long term potential. The Board of Locate believes shareholders will benefit more from the long term value of its identified growth opportunities than the current takeover offer by [Offeror]. This proposal will not be recommended to shareholders.*

## 7. TAKEOVER NOTICE RECEIVED – HOLDING STATEMENT

[insert date]

To NZX

### TAKEOVER NOTICE RECEIVED FROM [OFFEROR]

[Offeror] has announced that it intends to make a takeover offer for all the shares in Locate Technologies Limited (*Locate*) (NZX: LOC) at a price of [\$price] per share [in cash / in [Offeror] scrip].

At this stage Locate is not yet in a position to comment further. The Board of Locate will meet shortly to consider the offer in detail.

Until the Board of Locate has given further guidance, shareholders are advised to take no action in relation to [Offeror's] takeover offer.

Locate has received a takeover notice from [Offeror]. The takeover notice is not a takeover offer. If [Offeror] proceeds to make a takeover offer, it must do so within the period that begins 10 working days and ends 20 working days after today. Shareholders should be aware that [Offeror] is not legally obliged to make an offer during that period and, if it does not do so, the [Offeror] takeover notice will lapse.

- **Analysts' contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

#### Guidelines for media enquiry:

*We have no further comment at this stage. Shareholders and media will be kept informed of all major developments.*

## 8. TAKEOVER NOTICE RECEIVED – REJECTION STATEMENT

[insert date]

To NZX

### [OFFEROR] TAKEOVER OFFER REJECTED

[Offeror] has announced that it intends to make an unsolicited [highly] conditional takeover offer for all the shares in Locate Technologies Limited (*Locate*) (NZX: LOC) at a price of [\$price] per share [in cash / in [Offeror] scrip].

The Board of Locate, together with its advisers, has carefully considered the proposed offer and intends to unanimously recommend shareholders reject the offer. The Board believes that the offer is opportunistic and significantly undervalues the company. Locate is fast growing and the Board believes shareholders will benefit from the long term value of the company's identified organic growth opportunities.

Locate has received a takeover notice from [Offeror]. The takeover notice is not a takeover offer. If [Offeror] proceeds to make a takeover offer, it must do so within the period that begins 10 working days and ends 20 working days after today. Shareholders should be aware that [Offeror] is not legally obliged to make an offer during that period and, if it does not do so, [Offeror] takeover notice will lapse.

Should [Offeror] proceed to made an offer, the Board of Locate will set out its detailed views in relation to the offer from [Offeror] in the target company statement which will be mailed to all shareholders. In the meantime, Locate shareholders are advised to take no action [and **IGNORE ALL DOCUMENTS AND COMMUNICATIONS FROM [OFFEROR]]** in relation to [Offeror's] takeover offer.

- **Analysts' contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

#### Guidelines for media enquiry:

*The Board of Locate and its advisers have carefully considered the proposed offer and have no hesitation in unanimously concluding that the terms of the unsolicited offer significantly undervalue Locate profitability and long term potential. This offer is wholly unwelcome and will not be recommended to shareholders.*

## 9. LETTER TO SHAREHOLDERS AFTER TAKEOVER NOTICE RECEIVED – REJECTION STATEMENT

[insert date]

Dear shareholder,

### [OFFEROR] TAKEOVER OFFER REJECTED

I am writing to you to advise that [Offeror] has announced that it intends to make an unsolicited [highly] conditional takeover offer for all the shares in Locate Technologies Limited (*Locate*) (NZX: LOC) at a price of [\$price] per share [in cash / in [Offeror] scrip].

Your Board, together with its advisers, has carefully considered the proposed offer and intends to unanimously recommend shareholders reject the offer. Your Board believes that the offer is opportunistic and significantly undervalues the company. Locate is fast growing and your Board believes that you will benefit from the long term value of the company's identified organic growth opportunities.

Locate has received a takeover notice from [Offeror]. The takeover notice is not a takeover offer. If [Offeror] proceeds to make a takeover offer, it must do so within the period that begins 10 working days and ends 20 working days after [date on which takeover notice was lodged]. Shareholders should be aware that [Offeror] is not legally obliged to make an offer during that period and, if it does not do so, [Offeror] takeover notice will lapse.

Should [Offeror] proceed to made an offer, your Board will set out its detailed views in relation to the proposed offer from [Offeror] in the target company statement which will be mailed to you. In the meantime, you are advised to take no action [and **IGNORE ALL DOCUMENTS AND COMMUNICATIONS FROM [OFFEROR]**] in relation to [Offeror's] takeover offer.

If you would like any further information or would like to talk about the proposed Offeror offer, please call the shareholder enquiry line on [insert].

Yours faithfully,

[insert]

Chair

## 10. MEDIA RELEASE AFTER RELEASE OF OFFER DOCUMENT – HOLDING STATEMENT

[insert date]

### LOCATE RECEIVES TAKEOVER OFFER DOCUMENT

The Board of Locate Technologies Limited (*Locate*) (NZX: LOC) Limited advises that it has received the offer document relating to the takeover offer by [Offeror] for all the ordinary shares of Locate at a price of [\$price] per share [in cash / [Offeror] scrip]. The offer is conditional on [specify description of material conditions].

The Board of Locate will set out its views in relation to the offer from [Offeror] in a target company statement which will be mailed to shareholders [by [date]].

At this stage, shareholders are advised to take no action in response to the takeover offer.

- **Analysts' contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

#### Guidelines for media enquiry:

*We have no further comment at this stage. Shareholders and media will be kept informed of all major developments*

## 11. MEDIA RELEASE AFTER RELEASE OF OFFER DOCUMENT – REJECTION STATEMENT

[insert date]

### LOCATE RECEIVES TAKEOVER OFFER DOCUMENT AND REJECTS OFFER

The Board of Locate Technologies Limited (*Locate*) (NZX: LOC) advises that it has received the offer document relating to the unsolicited [highly] conditional takeover offer by [Offeror] for all the ordinary shares of Locate at a price of [\$price] per share [in cash / [Offeror] scrip]. The offer is conditional on [conditions].

The Board of Locate, together with its advisers, has carefully considered the offer and unanimously recommends that shareholders reject the offer. The Board of Locate will set out its views in relation to the offer from [Offeror] in a target company statement which will be mailed to shareholders [by [date]].

The Board of Locate maintains that the takeover offer is opportunistic and significantly undervalues the company [potential additional comments about conditionality]. Locate is fast growing and the Board of Locate believes shareholders will benefit from the long term value of its identified growth opportunities.

Shareholders are advised to reject the takeover offer [and **IGNORE ALL DOCUMENTS AND COMMUNICATIONS FROM [OFFEROR]**].

- **Analysts' contact:** [insert]
- **Media contact:** [insert]
- **Web site:** [insert]

#### Guidelines for media enquiry:

*We have no further comment at this stage. Shareholders and media will be kept informed of all major developments*

## 12. LETTER TO SHAREHOLDERS AFTER RELEASE OF OFFER DOCUMENT – HOLDING STATEMENT

[insert date]

Dear shareholder,

### **[OFFEROR] TAKEOVER OFFER REJECTED**

You will recall that I wrote to you on [date] to advise you that [Offeror] had announced on [date] that it intended to make a takeover offer for your shares in Locate.

[Offeror] has now made its takeover offer.

The Board of Locate has a responsibility to make a recommendation to you as shareholders about how to respond to the offer and to make sure that you are provided with the information necessary to form your own view about the offer. We are diligently working with our advisers on reviewing the offer document in conjunction with preparing a target company statement to formally respond [by [date]].

[Expand on what are the informational gaps in the offer document, if applicable].

Locate is fast growing and the Board of Locate believes shareholders will benefit from the long term value of the company's identified growth opportunities.

If you would like any further information or would like to talk about the proposed Offeror offer, please call the shareholder enquiry line on [insert].

Yours faithfully,

[insert]

Chair

[Attach, if appropriate, a list of deficiencies in the offer document]

### 13. LETTER TO SHAREHOLDERS AFTER RELEASE OF OFFER DOCUMENT – REJECTION STATEMENT

[insert date]

Dear shareholder,

#### LOCATE BOARD RECOMMENDS IGNORING [OFFEROR] TAKEOVER OFFER

You will by now have received a copy of the unsolicited offer for your Locate shares by [Offeror]. Your Directors unanimously recommend that you **REJECT** the offer.

[Potential comments about value and conditionality.]

Your Directors' views of this inadequate offer will be fully set out in their formal response to the offer (target company statement) which will be sent to you [specify period]. In the meantime, Directors urge that you **IGNORE ALL DOCUMENTS AND COMMUNICATIONS FROM [OFFEROR]**.

[An independent expert, [insert name of independent adviser], has valued Locate to help shareholders decide on how to respond to the offer. They have concluded that the value of your Locate shares is between \$[low] and \$[high]. This is between [low]% and [high]% more than the [Offeror]'s offer. [Insert name of independent adviser] concluded that the [Offeror]'s offer is [not reasonable].]

[The [Offeror] offer will not close before [date] [and may be extended up to [60 working days from date of the offer]]. In the absence of a superior offer which properly reflects Locate's fundamental strengths and excellent future growth prospects, your Directors recommend that you reject [Offeror's] offer.]

Your Directors will keep you informed of any developments. In the meantime, if you have any questions, please call [insert].

Yours faithfully,

[insert]

Chair

[Attach, if appropriate, a list of deficiencies in the offer document]

## Appendix B: Draft Meeting Agendas

### 1. Agenda for first full Board meeting

#### Agenda Locate Technologies Limited Board meeting

**Date of meeting:** *[insert date]*

**Attendees (by video conference):** *[list]*

**1. Conflicts and interested directors**

Consider conflicts of interest, if any, and adopt interested directors protocol

**2. The approach**

Note receipt of a *[takeover notice]* OR *[proposal]*

**3. Directors' duties**

Note directors' duties, including in particular:

- (a) the prohibition on defensive tactics
- (b) Rule 64 (no misleading and deceptive conduct) obligations

**4. Delegation of powers**

Delegate authority to a Board sub-committee to act on behalf of the Board in respect of the *[takeover notice]* OR *[proposal]*

**5. Appointment of advisers**

- (a) Approve appointment of financial adviser and legal counsel
- (b) Approve / consider appointment of independent adviser
- (c) Approve formation of takeover working group

## 2. Agenda for takeover working group

### Agenda Takeover working group meeting

**Date of meeting:** *[insert date]*

**Attendees:** [•], [•] and [•] (Locate Technologies Limited)  
[•] (Commercial Adviser)  
[•] (Chapman Tripp)

#### 1. Details of the [takeover notice] OR [proposal]

- (a) Identity of the offeror
- (b) Nature of the [offer] OR [proposal]
- (c) Key terms of the [offer] OR [proposal] – including conditions and any unusual terms
- (d) Whether due diligence or other access to information has been requested and, if so, the relevant timetable
- (e) Has exclusivity and/or a break fee been requested?

#### 2. Analysis of the [offer] OR [proposal]

- (a) Initial views on the [offer] OR [proposal] and response strategy
- (b) Comparison to approximate valuation
- (c) Analysis of share register
- (d) Likelihood of obtaining any required regulatory approvals
- (e) Extent of pre-existing stake (if any)

- (f) Whether any lock-ups have been obtained
- (g) Offeror funding
- (h) Other issues

**3. Analysis of the offeror**

- (a) Activities
- (b) Financial position
- (c) Strengths and weaknesses
- (d) Historical bidding strategy

**4. Market reaction (if relevant)**

- (a) Sharemarket
- (b) Media

**5. Timetable**

- (a) Prescribed by Takeovers Code (if relevant)
- (b) OIO and other regulatory timing implications (if relevant)

**6. Bid response**

- (a) Overall objective
- (b) Media strategy (if relevant)
- (c) Shareholder strategy (if relevant)

- (d) Alternative offeror strategy
- (e) Market strategy (if relevant)
- (f) Other alternatives

**7. Initiate contact with offeror and its advisers**

**8. Next steps**

- (a) **[Update business plan]**
- (b) Update valuation model
- (c) Make recommendation to the Board sub-committee
- (d) Prepare draft response to offeror
- (e) **[Other – e.g. drafting confidentiality agreement, regulatory analysis]**

### 3. Agenda for first Board sub-committee meeting

#### Agenda Board sub-committee

**Date of meeting:** *[insert date]*

**Attendees:** [•], [•], [•] and [•] (Directors)  
[•] (Locate Technologies Limited)  
[•] (Commercial Adviser)  
[•] (Chapman Tripp)

#### 1. Process

Review makeup, responsibilities and operation of the various response workstreams

#### 2. The approach

- (a) Report on initial conversation with offeror and any further contact
- (b) Report on [bid] OR [proposal] terms
- (c) Report on any other background information

#### 3. Consider the approach

Receive initial report from takeover working group on:

- (a) commercial logic/fit/synergies
- (b) strengths and weaknesses of offeror
- (c) offeror's ability to finance an offer/financial impact on offeror
- (d) likely reaction of shareholders

#### **4. Other considerations**

- (a) Consider takeover/scheme timetable
- (b) Consider whether investigations should be made into alternatives (e.g. potential white knights/joint ventures/acquisitions)
- (c) [Report on OIO position and any other regulatory issues]

#### **5. Response**

Consider recommendations of takeover working group in relation to response strategy

#### **6. Communication**

- (a) Report on communications, lobbying and management of the press
- (b) Note text of press releases and announcements (if relevant)
- (c) Approve press releases and announcements (if relevant)

#### **7. Next steps**

- (a) Issue the press releases and announcements (if relevant)
- (b) Appoint independent adviser
- (c) Seek Takeovers Panel's approval of independent adviser
- (d) Communication with market/shareholder/regulatory bodies (if relevant).

## Appendix C: Draft “Interested Director” Protocol

This appendix sets out a protocol for any directors involved with, or otherwise associated with (such as a potential party to a lock-up agreement with), an offeror (or likely offeror) in the event of a takeover offer for Locate. This appendix also provides some guidance in respect of directors with significant shareholdings.

Directors have various obligations (including both disclosure and confidentiality obligations) under the Companies Act and the NZX Main Board listing rules. This protocol sets out additional principles for regulating the role of, and flow of information to, interested directors.

### Proposed approaches

- 1 Any director who is involved with, or who is associated in any other way with, an offeror (or a person likely to become an offeror), subject to any legal restrictions, must make prompt disclosure to the Board (initially via the chairperson) as soon as he or she becomes aware of a potential bid.
- 2 This disclosure should be sufficient to ensure that the directors not associated with any offeror (“non-interested directors”) can satisfy their legal obligations and properly assess what steps to take to prevent (or minimise) any prejudice to Locate and non-bidding shareholders as a result of the conflict.
- 3 The non-interested directors, after consulting Locate’s legal adviser (if required), will:
  - 3.1 confirm whether that director should be regarded as interested, and
  - 3.2 take such steps as they shall reasonably consider necessary or desirable to prevent (or minimise) any prejudice to Locate and non-bidding shareholders as a result of the conflict.
- 4 Any interested director will not be entitled to receive any information, report or other material provided to, or prepared by, the non-interested directors concerning the bid, Locate’s response to the bid, or any other matter the non-interested directors consider should not, in the circumstances, be disclosed to that director in view of his or her conflict, except to the extent that access is necessary for a conflicted director to fulfil their obligations under applicable law in respect of the offer. Locate’s management will be instructed accordingly.

- 5 No interested director will make any request or demand for any bid response materials to any person other than the non-interested directors, who will be entitled to refuse access to that information or grant access on such terms and conditions as they consider appropriate. Locate management will be instructed accordingly.
- 6 An interested director will not be entitled to attend meetings of the Board (or committees of the Board) called to discuss the bid, any related issues, or any other matters the non-interested directors consider should not be discussed with the interested director in view of that director's conflict. An interested director will leave any meeting at which any such matter is discussed, unless the non-interested directors agree to him or her remaining.
- 7 At the request of any interested director, or at any other time the non-interested directors consider appropriate, the non-interested directors will consider whether circumstances have altered sufficiently (e.g. an offeror has withdrawn) for an interested director to no longer be regarded as interested.

#### **Are Locate directors with significant shareholdings interested directors?**

It is common for listed company directors to have shareholdings in the company. In fact, this is encouraged by corporate governance commentators. Directors who are also shareholders are not automatically to be regarded as interested directors given the overriding duty that directors must, when exercising powers or performing duties, act in good faith and in the best interests of the company.

The following circumstances could, however, lead to a conflict:

- the director (or a shareholder he or she represents) negotiating or entering into a pre-bid agreement with an offeror; or
- the director entering into other arrangements in his or her own capacity with the offeror (such as an agreement that the particular director will stay on as a director following a successful offer).

As of October 2025, there are several directors with relevant interests in Locate. For most, despite these shareholdings, it is unlikely that they would be regarded as having significant shareholding interests, as their respective holdings fall below the threshold to be classed as a "substantial product holding" as that term is defined in section 274 of the Financial Markets Conduct Act 2013 (being a relevant interest in 5% of more of quoted voting products of Locate).

Steve Orenstein, having approximately an interest in approximately [17%] of the Locate ordinary shares, may have an increased risk of becoming interested during the takeover process as his significant shareholding makes him a more likely target for bidders to enter into pre-

bid arrangements with (such as a lock-up agreement). However, whether Mr Orenstein (or any other director) is in fact interested will be dependent on the circumstances applying to any potential transaction.

## Appendix D: Draft Class Notice

[Date]

[Offeror]

[Address]

By email:

### **RULE 42A CLASS NOTICE**

In accordance with rule 42A of the Takeovers Code, Locate Technologies Limited (*Locate*) (NZX: LOC) advises that, as at the date of this notice, the only equity securities (as defined in the Takeovers Code) that Locate has on issue are:

- [●] ordinary shares (the *Shares*) which have the rights and restrictions set out in Locate's constitution (a copy of which can be accessed at <https://companies-register.companiesoffice.govt.nz/>); and
- [[●] unlisted [performance share rights/options] (*Rights/Options*) which are subject to Locate's current [Employee Share Option Plan] and as described in the Appendix to this notice.]

Yours faithfully

**Locate Technologies Limited**

[insert]

Chair

### **Copy to:**

Takeovers Panel  
Level 3, Solnet House  
70 The Terrace  
PO Box 1171  
Wellington 6011

NZX Limited  
Level 2, NZX Centre  
11 Cable Street  
PO Box 2959  
Wellington 6011

**Appendix: [Performance Rights/Options]**

Locate has on issue the following [Rights/Options] under its [Employee Share Option Plan] (*Scheme*). The material terms of the [Rights/Options] are as set out in the **attached** rules of the Scheme.

Tranche	Hurdle	No. [Rights/Options]	Commencement Date	Measurement Date	Vesting Date	No. Qualifying [Rights/Options]	Vested (Y/N)	Deadline for Exercise (for any vested [Rights/Options])



chapman tripp